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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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In re: GN Docket No. 90-314  
PP Docket No. 93-253

Dear Messrs. Kennard and Pepper:

In the aftermath of the Commission's adoption of rules to establish the broadband personal communications services ("PCS") and to establish competitive bidding procedures for PCS licensing, this firm, like many others, has been heavily involved in advising clients on a wide range of PCS issues. It should come as no surprise that one of the issues of particular interest to these companies and individuals involves how to best structure a PCS applicant. The purpose of this letter is to request guidance with respect to three matters so that interested parties can proceed to structure PCS applicant entities that comply with the Commission's rules and policies in a timely manner.

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In the Second Report and Order in GN Docket No. 90-314 at ¶ 277, the Commission states that it

will depart from the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity.

This language seems to indicate that there may be situations where non-controlling principals could hold options for the controlling interest in a designated entity. A reasonably priced option that, when exercised, would properly compensate the minority and female principals for their interest in the designated entity would appear to "not deprive the minority and female principals of a substantial financial stake in the venture." Similarly, an option that is accompanied only by the reasonable protections traditionally accorded holders of such an instrument and where the holder otherwise abides by the Intermountain Microwave guidelines and related Commission caselaw would appear, without more, to not impair the rights of the minority and female principals to control the designated entity. Would an option such as the one described above fall within the exception to the "fully diluted" rule? Would an exercise date five years after the original license date influence the analysis?

Section 24.204(d)(2)(vi) provides that "[l]imited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses." Neither the rule nor the text adopting the rule addresses the issue of "insulation" from attribution. We note that for some purposes, predominantly in the broadcast area, "insulated" interests are not attributed by the Commission.<sup>1</sup> Are limited partnership interests in a properly insulated limited partnership attributable for any purpose in the context of PCS?

In the Further Order On Reconsideration in GN Docket No. 90-314, the Commission adopted a "multiplier" for purposes of the

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<sup>1</sup>See, e.g., 47 C.F.R. §73.3555, Note 2(g); 47 C.F.R. §76.501, Note 2(g).

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PCS/cellular cross-ownership rule and the broadband PCS spectrum cap rule. Although Section 24.204(d)(2)(viii) refers only to "intervening corporations," it is not clear whether the Commission intended to follow its precedent in the broadcast area and make the multiplier inapplicable to partnerships.<sup>2</sup> Is the "multiplier" adopted for purposes of PCS applicable in the case of an intervening partnership in the vertical ownership chain? Would the answer be different if the partnership involved were an insulated limited partnership?

In view of the Commission's dedicated effort to commence the auctions for broadband PCS before the end of this year, we respectfully request a prompt response to this letter so that interested parties will have adequate time to carefully consider how to best structure PCS applicants.

Should there be any questions concerning the issues discussed in this letter, please contact the undersigned.

Sincerely,



Richard Rubin

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<sup>2</sup>See Corporate Ownership Reporting and Disclosure By Broadcast Licensees, 58 RR 2d 604, 624 (n.85) (1985), recon. granted in part 61 RR 2d 739 (1986); see also Request For Declaratory Ruling Concerning the Citizenship Requirements Of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, 58 RR 2d 531, 540 (¶ 20) (1985), reconsideration, 61 RR 2d 298 (1986); 47 C.F.R §73.3615(a)(3)(iv)(B).